

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

CIVIL NO. CIVIL NO. 3-19-CV-00214

33.8574 ACRES OF LAND, MORE OR  
LESS, SITUATE IN HUDSPETH COUNTY,  
STATE OF TEXAS; AND UNKNOWN  
HEIRS AND/OR DEVISEES OF GABINO  
SALAS, *ET AL.*,

Defendants.

**COMPLAINT IN CONDEMNATION  
WITH DECLARATION OF TAKING (40 U.S.C. §3114)**

The United States of America, by and through the undersigned Assistant United States Attorneys, files this Complaint in Condemnation with Declaration of Taking pursuant to 40 U.S.C. §§ 3113 and 3114.

1. This is a civil action brought by the United States of America at the request of the Secretary of the Department of Homeland Security, through the Executive Director, Asset Management, of United States Customs and Border Protection, for the taking of property under the power of eminent domain through a Declaration of Taking (**Exhibit 1**), and the determination and award of just compensation to the owners and parties in interest.

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1358.

3. The authority for the taking of the land is under and in accordance with the authorities set forth in Schedule A to **Exhibit 1** and made a part hereof.

4. The public purpose and use for which said property is taken is set forth in Schedule B to **Exhibit 1** and made a part hereof.

5. A general description of the land being taken is set forth in Schedule C to **Exhibit 1** and made a part hereof. A plan showing the property being taken is shown on Schedule D to **Exhibit 1** and made a part hereof.

6. The interest(s) being acquired in the property is described in Schedule E to **Exhibit 1** and made a part hereof.

7. The names and addresses of known parties having or claiming an interest in said property are set forth in Schedule G to **Exhibit 1** made a part hereof.

8. Local and state taxing authorities may have or claim an interest in the property by reason of taxes and assessments due and payable.

9. In addition to those persons named, there are or may be others who have or may have some interest in the property or interests to be taken, whose names are unknown to the Plaintiff, and such persons are made parties in the action under the designation “Other Interested Parties.”

WHEREFORE, Plaintiff demands judgment that the property and interests be condemned, and that just compensation for the taking be ascertained and awarded, and such other relief as may be lawful and proper.

Respectfully submitted,

JOHN F. BASH  
UNITED STATES ATTORNEY

BY: /s/Matthew Mueller  
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ATTORNEYS FOR PLAINTIFF  
UNITED STATES OF AMERICA

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

/s/ Matthew Mueller

## FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA )

Plaintiff, )

vs. )

33.8574 ACRES OF LAND, MORE OR )  
LESS, SITUATE IN HUDSPETH COUNTY, )  
STATE OF TEXAS; AND UNKNOWN )  
HEIRS AND/OR DEVISEES OF GABINO )  
SALAS, *ET AL.*, )

Defendants. )

**DECLARATION OF TAKING**

CIVIL NO. 3-19-CV-00214

DECLARATION OF TAKING

I, Loren Flossman, Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, under the authority delegated to me by the Act of Congress approved November 25, 2002, as Public Law 107-296, 116 Stat. 2311 and codified at 6 U.S.C. §§ 202, 251, and 557, which transferred certain authorities of the Attorney General to the Secretary of Homeland Security; and by DHS Delegation No. 7010.3(II)(B), which delegated land acquisition authority from the Secretary of Homeland Security to the Commissioner of U.S. Customs and Border Protection; and by CBP Delegation 18-200, which delegated land acquisition authority of \$5 million dollars or less to the Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol; do hereby declare that:

1. The authority for the acquisition of the estate in the property taken is set forth in Schedule A.
2. The public purpose for which the property is taken is set forth in Schedule B.
3. The legal description of the property taken is set forth in Schedule C.

4. A map or plat showing the land being taken is set forth in Schedule D.
5. The estate taken in the property is set forth in Schedule E.
6. The amount estimated to be just compensation for the taking, which sum I caused to be deposited in the Registry of the Court for the use and benefit of the persons entitled to it, is set forth in Schedule F. I am of the opinion that the ultimate award for the taking will be within the limit prescribed by law on the price to be paid for it.
7. The names and addresses of known parties who have or may claim an interest in the property are set forth in Schedule G.
8. The United States of America made best efforts to negotiate acquisition of the property interest sought prior to filing this condemnation action.

I, Loren Flossman, Acquisition Program Manager, Wall Program Management Office, U.S. Border Patrol Program Management Office Directorate, U.S. Border Patrol, U.S. Customs and Border Protection, Department of Homeland Security, state and declare that the property rights acquired are taken in the name of and for the use of the United States of America under the authority and for the public purpose stated herein.

IN WITNESS WHEREOF, the United States of America, by direction of the Secretary of the Department of Homeland Security and the Chief, U.S. Border Patrol, U.S. Customs and Border Protection, hereunto authorized, subscribes his name this 14 day of June, 2019 in the City of Washington, District of Columbia.

UNITED STATES OF AMERICA

BY: 

Loren Flossman  
Acquisition Program Manager  
Wall Program Management Office  
U.S. Border Patrol Program Management Office Directorate  
U.S. Border Patrol  
U.S. Customs and Border Protection  
Department of Homeland Security



**SCHEDULE A**

**AUTHORITY FOR THE TAKING**

The property is taken under and in accordance with 40 U.S.C. §§ 3113 and 3114, which authorize the condemnation of land and the filing of a Declaration of Taking; the Act of Congress approved September 30, 1996, as Public Law 104-208, Division C, Section 102, 110 Stat. 3009-546, 3009-554-55, as amended and codified at 8 U.S.C. § 1103(b) & note; and the Act of Congress approved March 23, 2018, as Public Law 115-141, div. F, tit. II, 132 Stat. 348, which appropriated the funds that shall be used for the taking.

**SCHEDULE B**

**PUBLIC PURPOSE**

The public purpose for which said property is taken is to conduct surveying, testing, and other investigatory work needed to plan the proposed construction of roads, fencing, vehicle barriers, security lighting, cameras, sensors, and related structures designed to help secure the United States/Mexico border within the State of Texas.



**SCHEDULE C**

**LEGAL DESCRIPTION**

Hudspeth County, Texas

Tract: EPT-FHT-R1202

Owner: Unknown heirs and/or devisees of Gabino Salas, et al.

Acres: 33.8574

As identified in the Wrap Around Deed of Trust, Instrument # 113547, Volume 244, Page 423, filed on August 12, 2003, and the Release of Lien, Instrument # 128309, filed on September 10, 2008 (known as TRACT 3), in the deed records of Hudspeth County:

A portion of Section 27, Block "A", TEXAS AND PACIFIC RAILWAY COMPANY SURVEYS, and S. A. MAVERICK SURVEY NO. 134, all in Hudspeth County Texas: said property consisting of Tracts 1, 2, 3, 4, 5 and 6, Block 10, NEW GREEN VALLEY SUBDIVISION in Hudspeth County, Texas, according to a Plat thereof prepared by PEREZ & ASSOCIATES, Consulting Engineers; and being more particularly described by metes and bounds as follows:

BEGINNING at a point marking the East corner of Section 27, Block "A", Hudspeth County, Texas; said point also being a Westerly corner of Section 24, Block 64-1/2 (Public School Land);

THENCE, South 45° 00' West, 6601.55 feet along the Southeasterly line of Section 27 and the Northwesterly line of said Section 24 and Section 28, Block "A" to the POINT OF BEGINNING of this parcel; said point also marking the Southwest corner of Tract 1, Block 10 of said NEW GREEN VALLEY SUBDIVISION;

THENCE, North 26° 08' 25" West, a distance of 708.01 feet to a point along the Southwesterly line of said Tract 1;

THENCE, North 45° 00' East, a distance of 2086.77 feet to the Northeast corner of said Tract 6;

THENCE, South 45° 00' East, 670.00 feet to the Southeast corner of said Tract 6;

THENCE, South 45° 00' West, 2315.64 feet to the POINT OF BEGINNING, and containing 1,474,804.00 square feet, or 33.8574 acres of land, more or less.

**SCHEDULE D**

**MAP**

Rockbridge Road--Gabino Salas

El Paso Sector/ Hudspeth County, Texas

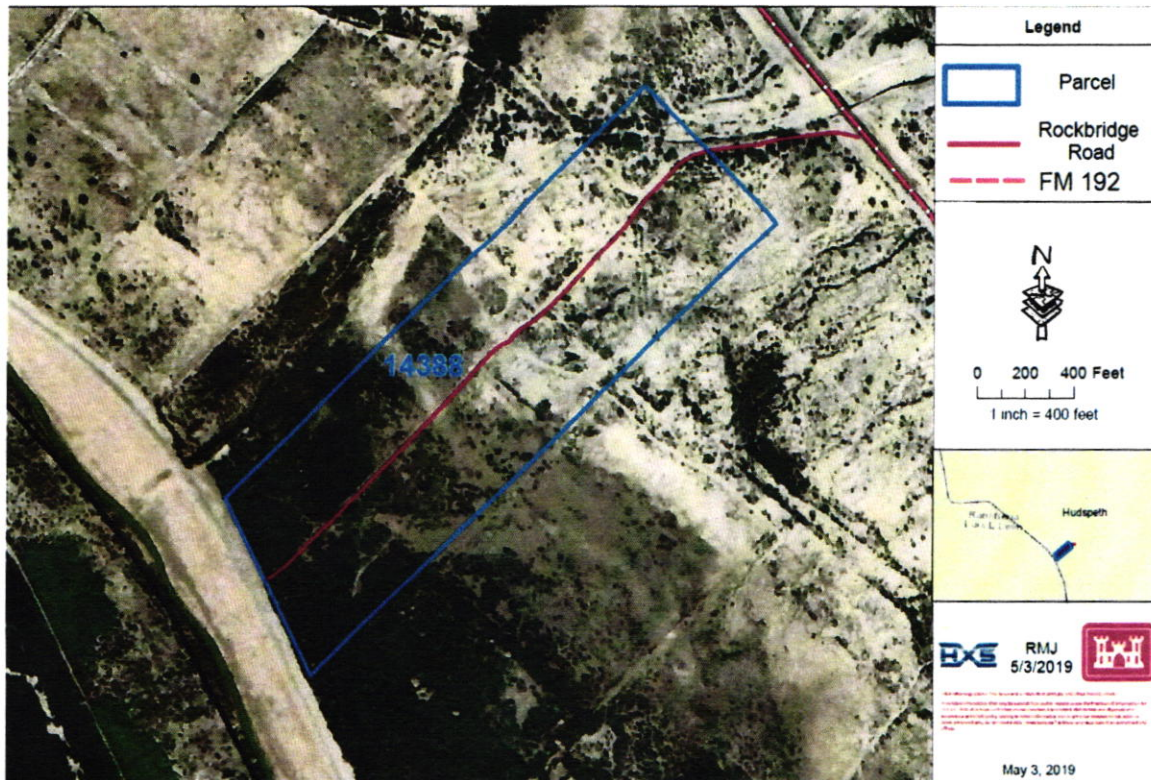


Exhibit A

**LAND TO BE CONDEMNED**

Tract: EPT-FHT-R1202

Owner: Unknown heirs and/or devisees of Gabino Salas, et al.

Acres: 33.8574

\* The case caption identifies acreage for the entire parent tract; access to the entire parent tract may be necessary to complete a survey of the proposed tract outlined in red on the map above.

**SCHEDULE E**

**ESTATE TAKEN**

Hudspeth County, Texas

Tract: EPT-FHT-R1202

Owner: Unknown heirs and/or devisees of Gabino Salas, et al.

Acres: 33.8574

The estate taken is a temporary, assignable easement beginning on the date possession is granted to the United States and ending 24 months later, consisting of the right of the United States, its agents, contractors, and assigns to enter in, on, over and across the land described in Schedule C to survey, make borings, and conduct other investigatory work for the purposes described in Schedule B and to access adjacent lands; including the right to trim or remove any vegetative or structural obstacles that interfere with said work; reserving to the landowners, their successors and assigns all right, title, and privileges as may be used and enjoyed without interfering with or abridging the rights hereby acquired; subject to minerals and rights appurtenant thereto, and to existing easements for public roads and highways, public utilities, railroads and pipelines.

**SCHEDULE F**

**ESTIMATE OF JUST COMPENSATION**

The sum estimated as just compensation for the land being taken is ONE HUNDRED DOLLARS AND NO/100 (\$100.00), to be deposited herewith in the Registry of the Court for the use and benefit of the persons entitled thereto; and, an additional sum determined at the conclusion of the temporary estate described in Schedule E to constitute actual damages, if any.



**SCHEDULE G****INTERESTED PARTIES**

The following table identifies all persons who have or claim an interest in the property condemned and whose names are now known, indicating the nature of each person's property interest(s) as indicated by references in the public records and any other information available to the United States. See Fed. R. Civ. P. 71.1(c).

Interested Party	Reference
Unknown heirs and/or devisees of Gabino Salas Unknown Address	EPT-FHT-R1202 August 12, 2003 - Wrap Around Deed of Trust, Instrument # 113547, Volume 244, Page 423, Deed Records of Hudspeth County  September 10, 2008 - Release of Lien, Instrument # 128309; Deed Records of Hudspeth County
Hudspeth County Tax Assessor P.O. Box 158 Sierra Blanca, Texas 79851	Taxing Authority